



POLICE DEPARTMENT

2/4/2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Matthew Center
Tax Registry No. 924032
Transportation Bureau Highway District
Disciplinary Case No. 2012-7466

The above-named member of the Department appeared before me on December 9, 2014, charged with the following:

1. Said Police Officer Matthew Center, while assigned to Highway District # 1, on or about December 22, 2010 and May 19, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on two (2) occasions assisted other members of the service to prevent the processing and adjudication of several summonses issued to two (2) different motorists. P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Department Advocate called Detective Kai Mendez as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses, this tribunal finds that the preponderance of the credible evidence did not establish that Respondent engaged in the charged misconduct.

* Although the charge alleges that Respondent participated in preventing the adjudication of two summonses, the evidence presented at trial referred to only one summons.

FINDINGS AND ANALYSIS

Many of the background facts are not disputed. In 2010, Respondent was assigned to Highway Patrol in the Bronx. At approximately 1615 hours on July 2, 2010, Respondent stopped Motorist A on the [REDACTED] and issued her a speeding ticket. He completed the summons and made a notation in his memo book indicating the summons number, location issued and the violation. Respondent issued a total of 16 summonses that day, including one ten minutes later at 1625 hours. Respondent made uniform entries in his memo book noting the number, location and specific violation pertaining to each of the 16 summonses. (Tr. 25-30; Dept. Exs. 3, 4)

In 2010, the Department and the Bronx District Attorney's Office were conducting a wiretap investigation into allegations of widespread ticket fixing in the Bronx. Delegates of the Bronx County Patrolmen's Benevolent Association (PBA) were subjects of the investigation. Detective Kai Mendez was assigned to this wiretap and intercepted a number of telephone calls between PBA representatives Joseph Anthony, Eugene O'Reilly and Christopher Fox, in which they conspired to fix the summons. The following is a summary of those taped conversations as transcribed in Dept. Ex. 1:

- At 1242 hours on July 3, 2010, PBA trustee Joseph Anthony reached out to PBA delegate Eugene O'Reilly seeking assistance to fix Motorist A's ticket. Anthony explained that Motorist A was his tenant. Respondent was named as the officer who issued the ticket. Anthony's reaction was, "who the hell is that?" O'Reilly responded, "Who?" and Anthony answered, "He has a weird operator's name and then he just wrote down center c-e-n-t-e-r." O'Reilly asked that Motorist A call him directly.
- At 1243 hours on July 3, 2010, Motorist A called O'Reilly directly to provide him with additional information about the ticket. O'Reilly lamented the fact that she had not called him immediately after the ticket was issued because it would have been easier to "square it away."

- At 1559 hours on July 3, 2010, O'Reilly called Christopher Fox, the PBA delegate for Highway Patrol, to ask for his assistance with the Motorist A summons. Fox told O'Reilly that he will "call Richie and tell him not to send anything down until I come in on Tuesday morning." He adds that he will "call Center, if he still got it," referring to the ticket.
- At 1933 hours on July 6, 2010, Fox informed O'Reilly that he was unable to stop the ticket because it had already been processed and sent to court. Specifically, Fox reports that "I told them to hold everything and they sent it all down." O'Reilly stated that Motorist A would have to go to court but assured Fox that "...we'll square it away. Not a big deal."
- At 2012 hours on July 6, 2010, O'Reilly called Anthony to tell him that the ticket had been processed and could not be pulled. He advised that Motorist A appear in court to plead "not guilty" and told him that "we'll square it away when she has to go to court...." He asked that Motorist A call him two weeks before the court date.

No other conversations concerning this matter were captured on the wiretap.

On December 22, 2010, Motorist A and Respondent appeared before a judge at the Traffic Violations Bureau hearing room. After being sworn in, Respondent told the tribunal that he had issued the Motorist A summons but because his "notes were not prepared in a timely manner" he was "unable to proceed." The judge thanked Respondent for his candor and dismissed the summons. (Dept. Ex. 2)

At issue is whether Respondent knowingly played a role in this ticket fixing scheme when he told the Traffic Violations Bureau judge that he was unable to proceed with the adjudication of the Motorist A summons. To reach a determination, this tribunal must ascertain whether the evidence, or the reasonable inferences entitled to be drawn from that evidence, supports a finding that Respondent engaged in the particular misconduct charged in the specification. This tribunal finds that there was insufficient evidence in the record to establish that Respondent was complicit with the PBA representatives who were attempting to have the Motorist A summons dismissed.

The evidence presented at trial would have certainly been sufficient to find that Respondent engaged in misconduct by failing to be prepared to testify in court. The charge in this instance, however, requires more than Respondent's court statement that he was unable to proceed. At the very least, a finding of guilt would require proof that Respondent had knowledge that PBA representatives were trying to fix this particular summons or that he intentionally altered his testimony at the Traffic Violations Bureau to assist them or Motorist A.

The recorded conversations in evidence provide no link between Respondent and this PBA scheme. We know by the recordings that the PBA representatives were talking about reaching out to Respondent, but there is nothing in evidence to establish that they did. Moreover, when Respondent was named in the recorded conversations as the officer who issued the ticket the PBA representatives did not seem to know him. The following exchange between Anthony and O'Reilly is instructive on this point:

Anthony: I had a question to ask you know that the tenant downstairs right she got stopped for a speeding ticket by a guy from the 4-5 yesterday he wrote down center, who the hell is that? [sp]

O'Reilly: Who?

Anthony: He has a weird operator's name and then he just wrote down center c-e-n-t-e-r.

Likewise, when O'Reilly and Fox speak about the Motorist A summons, there is no acknowledgement that Fox either knows Respondent, that they think he will cooperate or that he was actually contacted. It is important to note that Fox's initial reaction was not to contact Respondent directly for help with the summons. Instead, Fox first promises O'Reilly that he will "call Richie and tell him *not to send anything down*" for processing.

[emphasis added] Later in the conversation Fox states that he will call Respondent only if he still has the ticket. Three days later, Fox followed-up with O'Reilly to report that, "I told them to hold everything and they *sent it all down*." [emphasis added] It is reasonable to infer from this exchange that Fox contacted Richie about "*send[ing] it all down*," not Respondent. Even more significant is the fact that his request to hold the processing of summonses seems to have been ignored. In sum, the recordings fail to confirm that Respondent was contacted by the PBA, let alone that he purposely participated in ticket fixing.

The Department argues that within the context of the taped conversations, Respondent's failure to attempt to obtain a conviction at the Traffic Violations Bureau is sufficient to prove that he assisted in fixing this ticket. The gaps in the proven facts, however, preclude this tribunal from making the inference necessary to find that Respondent engaged in the charged misconduct.

"Correlation does not imply causation" is a scientific maxim used to emphasize that the correlation of two variables does not automatically imply that one causes the other. Here, Respondent's statement that he was "unable to proceed" with this case in traffic court does not prove that he knowingly assisted in ticket fixing. *Disciplinary Case No. 2011-5518* (Apr. 14, 2014) is instructive on this point: "Evidence in this forum must establish with some degree of certainty that the conduct it can prove occurred is not innocent or unrelated to the charged event."

Moreover, this tribunal credited Respondent's testimony that, based on years of experience making court appearances, he knew that the information on the face of a summons was insufficient to obtain a conviction for a speeding violation. Respondent

testified that it was his practice to write notes on the reverse side of each summons immediately after each vehicular stop which resulted in a moving violation. These notes contained the details judges required to convict a motorist of a speeding violation, including the basis for his visual speed calculation, description of laser or radar used to confirm speed, the motorist's lane position and weather conditions. None of these factors were written on this summons or in Respondent's memo book. (Tr. 53-57, 60) *See Case No. 2011-5518* (A seventeen-year officer was party to a conversation in which a union delegate talked about "taking care of something" but was found Not Guilty of fixing summonses.)

Accordingly, this tribunal recommends that the charge be dismissed.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

FEB 26 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER